

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	Facility ID No.78929
<b>Trinity Church of the Nazarene</b>	)	NAL/Acct. No.MB-200741410444
	)	FRN: 0004519880
Licensee of Station KRQZ(FM)	)	File No. BRED-20051223AAU
Lompoc, California	)	

**FORFEITURE ORDER**

**Adopted: December 16, 2010**

**Released: December 17, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Trinity Church of the Nazarene (“Trinity”), former licensee<sup>1</sup> of Station KRQZ(FM), Lompoc, California (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>2</sup>

**II. BACKGROUND**

2. On December 4, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Trinity for these violations.<sup>3</sup> As noted in the NAL, Trinity’s license renewal application should have been filed on August 1, 2005, four months prior to the Station’s license expiration date of December 1, 2005, but was not.<sup>4</sup> On December 9, 2005, Trinity filed a request for Special Temporary Authority (“STA”), and on December 23, 2005, it filed its renewal application.<sup>5</sup> Trinity filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on January 14, 2008.

<sup>1</sup> On April 17, 2008, Trinity filed an application for consent to assign the Station’s license to Spirit Communications, Inc. See File No. BALED-20080417ABP. That application was granted on July 2, 2008, and the parties consummated the assignment on August 3, 2008. Despite this assignment, Trinity remains liable for forfeiture for those violations occurring when the Station was under its stewardship. See, e.g., *Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140, 140 n.2 (MMB 1999) (finding licensee liable for forfeiture for violations of the Commission’s rules that took place when station was under its stewardship).

<sup>2</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>3</sup> *Trinity Church of the Nazarene*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20940 (MB 2007). The Bureau granted the above-referenced license renewal application on December 4, 2007.

<sup>4</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>5</sup> File No. BLSTA-20051209AGA. The Bureau granted the STA request on March 15, 2006. See *Letter to A. Wray Fitch, III, Esq.*, Ref. 1800B3 (MB Mar. 15, 2006). On September 12, 2006, Trinity filed a timely request for extension of the STA.

3. In its Request, Trinity states that cancellation or reduction of the proposed forfeiture is warranted because payment of the proposed forfeiture will cause it financial hardship.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission's *Forfeiture Policy Statement*.<sup>8</sup> In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>9</sup>

5. Trinity does not dispute that it failed to file a timely license renewal application for the Station and operated the Station without authority between the time the Station's license expired and the grant of its STA to continue operation. However, Trinity argues that the forfeiture should be reduced or cancelled because paying the forfeiture amount would cause it significant financial hardship. The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status.

6. Here, Trinity did not submit federal tax returns, financial statements or any other reliable and objective documentation setting forth Trinity's finances in support of its Request.<sup>10</sup> Instead, Trinity submitted only financial documentation relating to the operation of Station KROZ(FM),<sup>11</sup> stating that the financial records for the Station are accounted for separately.<sup>12</sup> We require a licensee's financial information, not an accounting of the station's separate funding, in order to entertain a request for reduction of forfeiture based on inability to pay.<sup>13</sup> Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

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<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> Trinity requested that its financial submission be kept confidential. Request at 2. We grant its request for confidentiality.

<sup>11</sup> Trinity submitted a document listing the Station's income and expenses for the years 2006, 2007, and 2008, showing a loss each year, and a statement of Trinity's Financial Secretary, Joan Jenkins, certifying the accuracy of the document. Request, Attachments 1 and 2.

<sup>12</sup> Request at 3.

<sup>13</sup> See *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (finding that a one-page document setting forth station income and expenditures for one year, and providing no information regarding licensee's finances, was an insufficient basis on which to assess a licensee's ability to pay); *Metropolitan School District of Washington Township*, Forfeiture Order, 23 FCC Rcd 9995, 9997 (MB 2008) (same).

7. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>14</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>15</sup> violated Section 301 of the Act.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>16</sup> that Trinity Church of the Nazarene, SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>17</sup> Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>18</sup> Licensee will also send electronic notification on the date said payment is made to [Kelly.Donohue@FCC.gov](mailto:Kelly.Donohue@FCC.gov) and [Victoria.McCauley@FCC.gov](mailto:Victoria.McCauley@FCC.gov). Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>19</sup>

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<sup>14</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("Southern California")

<sup>15</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</sup> *See* 47 C.F.R. § 1.1914.

<sup>19</sup> *Id.*

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First-Class Mail, to: Trinity Church of the Nazarene, 500 East North Avenue, Lompoc, California 93436, and to its counsel, A. Wray Fitch, III, Gammon & Grange, P.C., 8280 Greensboro Drive, 7<sup>th</sup> Floor, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau